

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MUSSIE E. WELDEYOHANNES,

11 Plaintiff,

12 v.

13 STATE OF WASHINGTON, *et al.*,

14 Defendants.

CASE NO. C23-5526-JCC-BAT

15 ORDER

16 This matter comes before the Court on the Report and Recommendation (“R&R”) (Dkt.
17 No. 37) of the Honorable Brian A. Tsuchida, United States Magistrate Judge, and Defendants’
18 objections (Dkt. No. 38). Having thoroughly considered the R&R, the objections, Defendants’
19 underlying summary judgment motion (Dkt. No. 29), and related briefing, the Court DECLINES
20 to adopt the R&R and GRANTS the summary judgment motion for the reasons explained herein.

I. BACKGROUND

21 The R&R discusses the factual background of this case in detail. (*See* Dkt. No. 37 at 1–
22 5.) To summarize, Plaintiff filed a *pro se* prisoner civil rights complaint (Dkt. No. 10).¹ He is
23 disabled and relies on a wheelchair for mobility. (*See id.* at 6.) In the complaint, he alleges that
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26 ¹ Because Plaintiff is proceeding *pro se*, this Court must interpret his complaint liberally. *See Bernhardt v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir. 2003).

1 Washington Corrections Center (“WCC”) personnel failed to reasonably accommodate his
 2 disability and used excessive force while transferring Plaintiff between Department of
 3 Corrections’ (“DOC”) facilities. (*See generally id.*). The complaint asserts Americans with
 4 Disability Act (“ADA”) and Rehabilitation Act (“RA”) claims against WCC and DOC as
 5 *respondeat superior* along with 42 U.S.C. § 1983 claims against several WCC employees. (*Id.* at
 6 10–28.) Defendants moved for summary judgment. (Dkt. No. 29.) They argued Plaintiff fails to
 7 state a claim for intentional discrimination or establish genuine issues of material fact regarding
 8 the Eighth Amendment violations; moreover, Plaintiff cannot overcome the individual
 9 Defendants’ qualified immunity. (*See id.* at 5–12.)

10 Judge Tsuchida issued an R&R recommending that the Court deny summary judgment on
 11 all claims except a § 1983 claim based on an Eighth Amendment medical care violation as to
 12 Defendant John Lee, a WCC sergeant. (*See generally* Dkt. No. 37.) For the remaining claims,
 13 Judge Tsuchida found that Plaintiff presented genuine issues of fact for each, thereby precluding
 14 summary judgment. (*Id.*) In objecting, Defendants contend Plaintiff did not present evidence of
 15 deliberate indifference, thereby failing to establish a genuine issue of fact. (*See generally* Dkt.
 16 No. 38.) Defendants further contend, at least with respect to the § 1983 claims, that Plaintiff
 17 cannot defeat qualified immunity. For this reason, Defendants renew their request for summary
 18 judgment. (*Id.*)

19 **II. DISCUSSION**

20 **A. Legal Standard**

21 “The court shall grant summary judgment if the movant shows that there is no genuine
 22 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
 23 Civ. P. 56(a). In making such a determination, the Court must view the facts and justifiable
 24 inferences to be drawn in the light most favorable to the nonmoving party. *Anderson v. Liberty*
 25 *Lobby, Inc.*, 477 U.S. 242, 255 (1986). Once a motion for summary judgment is properly made
 26 and supported, the opposing party “must come forward with ‘specific facts showing that there is

1 a genuine issue for trial.”” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587
 2 (1986) (emphasis in original) (quoting Fed. R. Civ. P. 56(e)).² Ultimately, summary judgment is
 3 appropriate against a party who “fails to make a showing sufficient to establish the existence of
 4 an element essential to that party’s case, and on which that party will bear the burden of proof at
 5 trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). This Court reviews the record *de novo*
 6 when considering objections to a magistrate judge’s R&R. *See* 28 U.S.C. § 636(b)(1).

7 **B. ADA and RA Claims**

8 Title II of the ADA and § 504 of the RA prohibit disability-based discrimination. *See*
 9 *Lovell v. Chandler*, 303 F.3d 1039, 1052 (9th Cir. 2002); *see also Armstrong v. Schwarzenegger*,
 10 622 F.3d 1058, 1063 (9th Cir. 2010) (confirming their application to state prisons). The elements
 11 for each are similar. *Compare Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002) (describing
 12 elements of an ADA claim), *with Lovell*, 303 F.3d at 1052 (describing elements of an RA claim).
 13 At a minimum, though, they require that a plaintiff allege and support some form of
 14 discrimination based on a disability. *Updike v. Multnomah Cnty.*, 870 F.3d 939, 950 (9th Cir.
 15 2017). This can take the form of deliberate indifference, as is alleged here. *Id.* Plaintiff suggests
 16 the individual defendants knew he could not self-ambulate (thereby requiring a special transport
 17 vehicle), but nonetheless required him to do so and, when he refused, carried him into the
 18 vehicle, causing pain and suffering. (*See generally* Dkt. No. 10.) The R&R found this to be
 19 sufficient to state a claim for an ADA and/or RA violation.

20 There is a fundamental flaw in this reasoning: the failure to engage with the source of the
 21 alleged violation—DOC’s erroneous coding of Plaintiff’s transportation status (T-5 vs. T-1),
 22 which the individual defendants then relied on. (*See* Dkt. No. 30 at 2.) While Defendant

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 24 ² Material facts are those that may affect the outcome of the case, and a dispute about a material
 25 fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the non-
 26 moving party. *Anderson*, 477 U.S. at 248–49. Conclusory, non-specific statements in affidavits
 are not sufficient, and “missing facts” will not be “presumed.” *Lujan v. National Wildlife
 Federation*, 497 U.S. 871, 888–89 (1990).

1 presented in a wheelchair, this does not mean he would be unable to self-ambulate for a short
 2 distance. (See Dkt. No. 31 at 3.) Concluding otherwise, regardless of Plaintiff's pleas at the time,
 3 is not tantamount to deliberate indifference, when viewed against undisputed evidence of the
 4 transport coding error. *See generally Updike*, 870 F.3d at 954.³

5 In opposing Defendants' motion for summary judgment, Plaintiff presented no evidence
 6 that a T-5 code (designating Plaintiff as requiring special transport) had been entered into the
 7 system and *viewable* to the individual defendants on the day in question—only that it *should*
 8 have been. (See generally Dkt. No. 29.) By contrast, Defendants presented evidence that a T-1
 9 code, indicating that Plaintiff could self-ambulate, was the only code so *viewable*. (See Dkt. No.
 10 30 at 2.) And even if this was error, as Plaintiff's evidence suggests, (see Dkt. No. 10 at 35), he
 11 presents no evidence that the individual defendants were aware of it. While Plaintiff, in his
 12 declaration, speculates they should have been, (see Dkt. No. 34 at 2–8), this is insufficient to
 13 withstand summary judgment. *See Martin v. Pierce Cnty.*, 2024 WL 776000, slip op. at 6 (W.D.
 14 Wash. 2024) (citing *Nigro v. Sears, Roebuck and Co.*, 784 F.3d 495, 497 (9th Cir. 2015)).

15 Accordingly, the Court SUSTAINS Defendants' objections and DECLINES to adopt the
 16 R&R's recommendation that summary judgment be denied on Plaintiff's ADA/RA deliberate
 17 indifference claims.

18 **C. § 1983 Claims**

19 Plaintiff presents two § 1983 claims against the individual defendants, both based on
 20 Eighth Amendment violations: deliberate indifference and excessive force. (See Dkt. No. 10 at
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22 ³ “[A] failure to act must be a result of conduct that is more than negligent [it] involves an
 23 element of deliberateness.” *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001); *see, e.g., Elie v. Los Angeles Unified Sch. Dist.*, 2021 WL 4706977, slip op. at 6 (C.D. Cal. 2021) (failure to provide counseling due to inability to effectively communicate and coordinate was negligence—not deliberate indifference) (citing *Updike*, 870 F.3d at 951); *Palacios v. Cnty. of San Diego*, 2020 WL 4201686, slip op. at 14 (S.D. Cal. 2020) (failure to designate detainee for suicide watch, despite prior incident, was tantamount to negligence and not deliberate indifference) (citing *Updike*, 870 F.3d at 951).

1 15–28.) The first must be disposed of on the same basis as the ADA/RA claims. *See supra*
 2 Section II.B. As to the second, Plaintiff asserts that by shackling him for transport and carrying
 3 him on and off the vehicle in that state, Defendants subjected Plaintiff to cruel and unusual
 4 punishment. (*See* Dkt. No. 10 at 15–24.)

5 Qualified immunity attaches to a correctional personnel’s official acts. *See Hamby v.*
 6 *Hammond*, 821 F.3d 1085, 1090 (9th Cir. 2016). According to the doctrine, individuals are
 7 immune from § 1983 liability unless their conduct amounted to a “deprivation of a constitutional
 8 or statutory right . . . that was clearly established at the time of the alleged misconduct.” *Id.*
 9 (internal citations omitted). This “right must be sufficiently clear that every reasonable official
 10 would have understood that what he is doing violates that right.” *Id.* (internal citations omitted).
 11 “Although a plaintiff need not find ‘a case directly on point . . . existing precedent must have
 12 placed the . . . constitutional question *beyond debate.*” *Id.* (emphasis added) (quoting *Ashcroft*
 13 *v. al-Kidd*, 563 U.S. 731, 741 (2011)). Judge Tsuchida found that the record was too unclear as
 14 to what happened and who knew what on the day at issue. (*See* Dkt. No. 37 at 28–29.)

15 But viewing the evidence in the light most favorable to Plaintiff and drawing all
 16 inferences in his favor, as this Court must, *see Matsushita Elec. Indus. Co.*, 475 U.S. at 585,
 17 some facts are undisputed—and they are determinative. Plaintiff was previously assessed by
 18 DOC medical personnel as to require special transport, *e.g.*, a T-5 category. (*See* Dkt. No. 10 at
 19 35.) At the time of transport, he pointed this out to WCC personnel and explained that he had
 20 medical and health issues requiring an accommodation. (*See* Dkt. No. 34 at 4–5.) He also
 21 presented in a wheelchair. (*Id.*) But the records available at the time did not contain this
 22 information. (*See* Dkt. No. 10 at 35.) As such, the individual defendants surmised that Plaintiff
 23 could self-ambulate up a few steps, which is common for individuals who otherwise require use
 24 of a wheelchair. (*See* Dkt. Nos. 30 at 2, 31 at 3.) While they were ultimately mistaken, this is not
 25 the standard for an Eighth Amendment violation. *See Foster v. Runnels*, 554 F.3d 807, 814 (9th
 26 Cir. 2009) (prison official must be “aware of a risk” and “deliberately disregard” it). And to the

1 extent the experience was unduly painful, as Plaintiff contends, he directs the Court to no lasting
2 injury from this experience. (*See generally* Dkt. No. 10.)

3 To establish the violation of a clearly established right, Plaintiff must point the Court to
4 closely analogous caselaw or at least a “robust consensus of cases of persuasive authority” that
5 facts as those just described collectively constitute cruel and unusual punishment. *See Hopson v.*
6 *Alexander*, 71 F.4th 692, 697 (9th Cir. 2023) (quoting *D.C. v. Wesby*, 583 U.S. 48, 63 (2018)).
7 He points to none. (*See generally* Dkt. Nos. 33, 39.) Nor could the Court independently locate
8 any. Therefore, the Court finds that Plaintiff’s right to be free from cruel and unusual
9 punishment, as presented to the Court in this context, is not clearly established.

10 Accordingly, the Court SUSTAINS Defendants’ objections and DECLINES to adopt the
11 R&R’s recommendation that summary judgment on Plaintiff’s § 1983 claims be denied.

12 **III. CONCLUSION**

13 For the foregoing reasons, the Court hereby finds and ORDERS:

14 (1) Defendants’ objections to the R&R (Dkt. No. 38) are SUSTAINED.

15 (2) The Court DECLINES to adopt the R&R (Dkt. No. 37).

16 (3) Defendants’ motion for summary judgment (Dkt. No. 29) is GRANTED. Plaintiff’s
17 claims are DISMISSED with prejudice.

18 (4) The Clerk is directed to send copies of this Order to Plaintiff and to Judge Tsuchida.

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20 DATED this 4th day of June 2024.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE